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IN THE

Supreme Court of the United States

OCTOBER TERM, 1933

No. 166

FEDERAL COMPRESS AND WAREHOUSE COMPANY, ET AL.,

Appellants,

VS.

E. R. McLEAN, Sheriff and Tax Collector,

Appellee.

BRIEF FOR APPELLEE.

STATEMENT OF THE CASE

The Federal Compress and Warehouse Company, a corporation, organized under the laws of the State of Delaware, and with a place of business at Cleveland, in Bolivar County, Mississippi, paid under protest to the sheriff and tax collector of Bolivar County, Mississippi, privilege tax imposed by Sections 57 and 63 of Chapter 88 of the General Laws of Mississippi 1930, and thereafter, filed suit against the said sheriff and tax collector in the Circuit Court of the First District of Bolivar County, Mississippi, to recover the amount of the tax paid upon the grounds: (1) that it was an instrumentality engaged in interstate commerce and was thereby exempt from state taxation, and (2) that the statutes imposed a direct tax

upon it as an instrumentality of the federal government.

The case was submitted to the court on an agreed statement of facts, and resulted in a judgment in favor of the sheriff and tax collector. Upon an appeal to the Supreme Court of Mississippi, the judgment of the trial court was affirmed; whereupon, the Federal Compress and Warehouse Company prosecutes an appeal to this Court.

STATEMENT OF FACTS.

The facts as disclosed by the record are as follows:

The appellant, the Federal Compress and Warehouse Company, is a corporation, chartered under the laws of the State of Delaware, with its principal place of business at Memphis, Tennessee, and operating cotton warehouses and compresses in the State of Mississippi.

Appellee, E. R. McLean, is the sheriff and tax collector of Bolivar County, Mississippi.

Cotton is the great cash crop of Mississippi farmers, and when ripened in the field is picked by hand, put through ginneries, where the lint is removed from the seed and the lint cotton wrapped and tied into bales, weighing approximately 500 pounds each, and which said bales are approximately five feet in length, three and one-half feet in width and four and one-half feet in height.

That at Cleveland, Mississippi, there exists a market for the purchase and sale of cotton between farmers and cotton brokers and others engaged in like business. Said

cotton brokers and others engaged in such business purchase cotton for the purpose of selling same in interstate commerce. The price at which cotton is sold upon the market at Cleveland is determined by the value of such cotton based upon the grade, staple and conditions as valued by certain cotton exchanges in the city of New Orleans, Chicago and New York. Quotations are received for approximately five hours each day by wire which fixes the price at which cotton is sold upon the market at Cleveland, Mississippi. At this point there are approximately twenty-five buyers and shippers who are engaged solely in the business of buying, selling and shipping cotton in interstate and foreign commerce.

The general course of business among cotton buyers, sellers and shippers at Cleveland, Mississippi, is that a buyer enters into a contract for either the immediate or future delivery of a certain number of bales of cotton of a specified class, grade and staple obligating himself to deliver to a mill in a foreign state or country, a certain number of bales of cotton at a certain or given price, whereupon such buyer will go upon the market at Cleveland and purchase cotton of the kind and character which he has obligated himself to deliver and will cause delivery under the terms of his contract. Not exceeding ten per cent of the cotton purchased by shippers is bought when no contract for sale thereof exists, but in all instances it is bought with the sole intention of procuring a sale in some foreign market and with the intention of causing the same to be transported in interstate commerce. In the purchase of such cotton, there is from one to ten per cent of same that is not fit for interstate sale and shipment, which said cotton is sold locally.

The appellant operates a cotton warehouse and compress at Cleveland, Bolivar County, Mississippi, and has with reference to the operation of its cotton warehouse and compress complied with all of the terms and provisions of the Act of Congress of the United States known as the "United States Warehouse Act," the same being Chapter 10, Title 7, U. S. C. A. That the capacity of the warehouse is more than 20,000 bales and less than 35,000 bales; that the amount of cotton compressed by appellant at this point is more than 30,000 bales and less than 40,000 bales per annum.

The compress is a combination storage and plant equipped with machinery designed for the compression of bales of cotton for the purpose of reducing its size. After the cotton is compressed, there may be loaded into cars and ships, for carriage, approximately three times as much cotton after compression as otherwise would be possible without compression.

Approximately twenty-five per cent of the cotton which is bought and sold upon the market at Cleveland, and stored and compressed by appellant, is transported to the compress and warehouse by automobile trucks or wagons and delivered by that means to such compress and warehouse. Approximately seventy-five per cent of such cotton stored and compressed in appellant's warehouse and compress at Cleveland is transported to said compress by rail over the Yazoo and Mississippi Valley Railroad Company, a common carrier, engaged in interstate commerce.

When cotton is delivered to the appellant at its ware-

house and compress, it issues to the owner of such cotton a warehouse receipt, which receipt complies with all of the terms and provisions of the "United States Warehouse Act." The cotton is sampled and sold by the owner thereof on the basis of quality disclosed by the sample and by endorsement and delivery of the warehouse receipts evidencing the ownership of same, the price being governed by the markets in New Orleans, Chicago and New York.

Cotton is concentrated and stored in the appellant's warehouse and compress for the purpose of compression and for the purpose of awaiting the determination of its final point of destination outside of the State of Mississippi. When the destination of such cotton is determined, and after having the same compressed and receiving shipping orders, and having the warehouse receipt surrendered by the owner, and the compression charges paid by the carrier, appellant then loads same out. The carrier charges the through rate from the point of origin to the point of destination outside of the State of Mississippi, instead of charging the combined rate for carriage as intrastate commerce from the point of origin to Cleveland, plus the charge for carriage in interstate commerce from Cleveland to point of destination outside the state. The carriage charges are made by said carriers in accordance with the regulations prescribed by the Interstate Commerce Commission in pursuance of the Act of Congress creating said Commission.

By an agreement entered into between the Yazoo and Mississippi Valley Railroad Company and the appellant, the Federal Compress and Warehouse Company, dated the 1st

day of February, 1930, the Federal Compress and Warehouse Company is made the Limited Agent of the Railroad Company, for the purpose of receiving cotton from the railroad company, delivering cotton to the railroad, loading and unloading cotton from and into the cars of said Railroad Company, making proper delivery of cotton in the custody of said Compress Company, insofar as concerns the interest of the Railroad Company. When cotton has been placed in the appellant's warehouse and compress, it there remains until the owner of such cotton desires to have it shipped, when such owner delivers a shipper's order and surrenders the warehouse receipts, evidencing the ownership of such cotton. The identity of each bale of cotton is not preserved in reshipping and substitution is permitted with the understanding that the integrity of the through rate from the original shipping point to ultimate destination is preserved.

The charge of the appellant, the Federal Compress and Warehouse Company, for compressing the cotton, namely, fifteen cents per hundredweight is paid by the carrier.

No cotton is compressed by the appellant until it is ready to move out of the warehouse by rail and only ten bales of cotton during the last five years has moved from said compress, without compression, to a mill in Mississippi.

It is further shown that the Federal Compress and Warehouse Company does not buy or sell cotton or own any interest in same; that when cotton is shipped out of the warehouse, bills of lading therefor are not issued to the

appellant, but to the owners of such cotton as evidenced by the ownership of warehouse receipts; that the movement of cotton out of the warehouse is directed by the owner of same as evidenced by the owner of warehouse receipts; that the appellant does not own or operate, directly or indirectly, any facilities for the transportation of cotton from its warehouse at Cleveland, Mississippi, to points within or without the boundaries of the State of Mississippi, and is not a common carrier for hire or otherwise.

It is further shown in the record that appellant paid, under protest, the amount of privilege taxes sued for as a right or privilege to operate its warehouse and compress. That the warehouse and compress are taxed separately by the laws of the State of Mississippi, that is to say; the privilege to operate the warehouse is taxed separately from the right to operate the compress, and by separate, distinct and different sections of the Privilege Tax Statute.

STATUTES IN CONTROVERSY

Chapter 88 of the General Laws of Mississippi, 1930, levies a privilege tax on various trades, professions, callings and businesses. The statute contains 246 sections. The sections of the statute necessary for a determination of the questions involved in this lawsuit are Sections 3, 57, 63 and 242. The sections in question will be found set out in full in Appendix "A" of this brief.

The "United States Warehouse Act" the same being Chapter 10, Title 7 of United States Code Annotated, Act August 11, 1916 C. 313, 39 Stat. L. 486, and amendments thereto.

QUESTIONS INVOLVED

1. Whether or not Sections 3, 57 and 63 of Chapter 88, Laws of Mississippi 1930, imposing a privilege tax upon the operator of a cotton warehouse and compress, contravenes the provision of Paragraph 3 of Section 8, Article 1, of the Constitution of the United States, as imposing a state tax upon interstate commerce.

2. Whether or not the operator of a cotton warehouse and compress, licensed under the provisions of the "United States Warehouse Act," the same being Chapter 10, Title 7 of U. S. C. A. is a federal instrumentality and thereby exempt from state taxation.

BRIEF AND ARGUMENT

It is contended by appellant that it is not liable for the payment of the privilege tax imposed by the statutes of the State of Mississippi, for the privilege of operating a cotton warehouse and compress at Cleveland, Mississippi, for the following reasons:

1. Because, it says, it is engaged in interstate commerce, and the privilege tax imposed by the State of Mississippi is a direct tax and burden upon an instrumentality of interstate commerce in violation of Paragraph 3 of Section 8 of Article 1 of the Constitution of the United States, granting to Congress the power to regulate commerce among the several states.

2. That the statutes levy and impose a direct tax up-

on the activities of an instrumentality of the Federal government.

With the contention of appellant thus stated, it first appears to be necessary to determine when a commodity is in the channels of interstate commerce. If the appellant's compress and warehouse is a part of the channel of interstate commerce through which cotton concentrated at Cleveland, Mississippi, passes as a commodity of interstate commerce, then of course, it is an instrumentality of interstate commerce and it is without the power of the state to impose a privilege tax upon it for the privilege of storing and compressing cotton, but if on the other hand the compress and warehouse is no part of the channel of interstate commerce through which cotton concentrated at Cleveland, Mississippi, passes, after it enters the channels of interstate commerce, then it is within the power of the state to impose the privilege tax paid by appellant and here sued for, and no constitutional right of appellant has been transgressed by the exaction.

In order to determine whether or not the appellant's warehouse and compress is a part of the channel of interstate commerce, it is necessary to ascertain when, in point of time, a commodity enters the channel of interstate commerce. In doing this, we must keep in mind that the appellant is a private corporation operated at its pleasure and for its own individual profit; that it does not buy or sell cotton; that the movement of cotton into and out of the warehouse and compress is directed by the owner of such cotton; that appellant has no facilities nor does it operate any facilities for transportation of cotton from its ware-

house at Cleveland, Mississippi, to points within or without the State of Mississippi, and it is not a common carrier of property for hire.

Counsel for appellant segregate and discuss the tax liability on the compress and warehouse separately. If the tax on either is forbidden, by the Federal Constitution, both are, therefore we shall discuss both under point Number One in this brief.

POINT NO. I.

THE IMPOSITION OF A STATE PRIVILEGE TAX UPON THE OPERATOR OF A COTTON WAREHOUSE AND COMPRESS, FOR THE PRIVILEGE OF STORING AND COMPRESSING COTTON CONCENTRATED AT CLEVELAND, MISSISSIPPI, DOES NOT VIOLATE PARAGRAPH 3 OF SECTION 8 OF ARTICLE 1 OF THE CONSTITUTION OF THE UNITED STATES, AS IMPOSING A STATE TAX UPON AN INSTRUMENTALITY ENGAGED IN INTERSTATE COMMERCE BECAUSE THE MOVEMENT OF COTTON CONCENTRATED AT CLEVELAND, MISSISSIPPI, IN INTERSTATE COMMERCE, DOES NOT BEGIN UNTIL THE STORAGE AND COMPRESS CHARGES ARE PAID, AND THE COTTON IS DELIVERED TO A CARRIER, FOR TRANSPORTATION, WITH A DESTINATION FIXED AT A POINT BEYOND THE BOUNDARIES OF THE STATE OF MISSISSIPPI.

Until cotton, concentrated at Cleveland, Mississippi, is actually loaded or committed to a common carrier for transportation to another state, it cannot be in interstate

commerce and therefore, not in the hands of an instrumentality of interstate commerce as a part of the channel of interstate commerce. All of the authorities seem to agree with this proposition.

In *Coe v. Errol*, 116 U. S. 517, 29 L. ed. 715, logs cut in the state of Maine, and others cut in the state of New Hampshire, were floated, in course of transit, down a stream in New Hampshire to the town of Errol in the latter state, thence to be floated down another stream or river into the state of Maine. The town of Errol assessed upon the property a county, town, school and highway tax. The tax was sustained by the Supreme Court of the State of New Hampshire as to the logs cut in that state, and abated as to those cut in Maine. The judgment was affirmed by the Supreme Court of the United States. In disposing of the question, Mr. Justice Bradley used the following language:

> "When the products of the farm or forest are collected and brought in from the surrounding county to a town or station serving as an entrepot for that particular region, whether on a river or a line of railroad, such products are not yet exports nor are they in process of exportation, nor is exportation begun until they are committed to the common carrier for transportation out of the state to the state of their destination or have started on their ultimate passage to that stage.* * * *
>
> "That such goods do not cease to be part of the general mass of property in the state, subject to such, to its jurisdiction and to taxation in the usual way, until they have been shipped or entered with a common carrier for transportation to

another state or have been started upon such transportation in a continuous route or journey. * * * *. It was said in the case of *The Daniel Ball*, 10 Wall. 565 (77 U. S. bk. 19, L. ed. 1002): 'Whenever a commodity has begun to move as an article of trade from one state to another, commerce in that commodity between the states has commenced.'

"But this movement does not begin until the articles have been shipped or started for transportation from one state to the other. The carrying of them in carts or other vehicles or even floating them to the depot where the journey is to commence is no part of that journey. That is all preliminary work, performed for the purpose of putting the property in a state of preparation and readiness for transportation. Until actually launched on its way to another state, or committed to a common carrier for transportation to such state, its destination is not fixed and certain. It may be sold or otherwise disposed of within the state, and never put in course of transportation out of the state. Carrying it from the farm or the forest to the depot is only an interior movement of the property, entirely within the state, for that purpose, it is true, but only for the purpose of putting it into a course of exportation; it is no part of the exportation itself. Until shipped or started on its final journey out of the state its exportation is a matter altogether in fieri, and not at all a fixed and certain thing."

In *Diamond Match Company v. Village of Ontonagon*, 188 U. S. 81, 47 L. ed. 394, a bill in equity was filed to restrain the collection of a tax levied under the laws of the

State of Michigan. The complainant was a corporation organized and existing under the laws of the State of Illinois, with its principal place of business in the City of Chicago in said state. It was the owner of a large quantity of pine wood, timber, etc., in Octonagon and other counties in the State of Michigan. It also owned saw mills located at Ontonagon, Michigan, and at Green Bay, Wisconsin, logs were cut from the forest or floated down the Ontonagon River to its mills at Ontonagon to be manufactured into lumber. In August, 1896, complainant's mills at Ontonagon burned; whereupon, the logs were transported by railroad to Green Bay, Wisconsin, to complainant's mill there located. The complainant contended that the property was in course of transportation in interstate commerce and that the Village of Ontonagon had no authority to levy the tax.

The court in deciding the case quoted with approval from the opinion of *Coe v. Errol*, supra, and in addition, said:

> "Whenever a commodity has begun to move as an article of trade from one state to another, commerce in that commodity between the states has commenced. But this movement does not begin until the articles have been shipped or started for transportation from the one state to the other. The carrying of them in carts or other vehicles, or even floating them, to the depot where the journey is to commence, is no part of that journey. * * * *.
>
> "In further specialization of these propositions we may say that the cases establish that there may be an interior movement of property

> which does not constitute interstate commerce, though property come from or be destined to another state. In the one case, though it has not reached its place of disembarkation or delivery it may be taxed. 114 U. S. 622, 29 L. ed. 257, 5 Supr. Ct. Rep. 1091. In the other case, until it be shipped or started on its final journey it may be taxed. 116 U. S. 517, 29 L. ed. 715, 6 Sup. Ct. Rep. 475."

In *American Manufacturing Company v. St. Louis*, 250 U. S. 459, 63 L. ed. 1084, a statute of the state of Missouri authorized cities to license, tax and regulate manufacturers. In pursuance to this authority, by the ordinance brought in question, in addition to an ad valorem tax, required every manufacturer before doing business to take out a license and thereafter pay a license tax of One Dollar on each $1,000.00 of sales made. A suit was brought in the state court to recover the amount of the tax paid, under the ordinance measured by the amount of sales of goods manufactured in the city and afterwards removed to storage warehouses outside of the state and later sold in other states than Missouri. A judgment at first was given in favor of plaintiff but being reversed by the State Supreme Court, a new trial resulted in favor of the city.

In construing the statute and defining the nature of the tax the State Supreme Court of Missouri, in 198 S. W. 1183, used the following language:

> "We hold that the tax in question is a tax upon the privilege of pursuing the business of manufacturing these goods in the City of St. Louis; * * *."

In affirming the case the Supreme Court of the United States quoted from the opinion of the Supreme Court of Missouri, and further approved the validity of the tax by saying:

> "In our opinion the operation and effect of the taxing ordinance are to impose a legitimate burden upon the business of carrying on the manufacture of goods in the city; it produces no direct burden on commerce in the goods manufactured, whether domestic or interstate, and only the same kind of incidental and indirect effect as that which results from the payment of property taxes or any other and general contribution to the cost of government. Therefore, it does not amount to a regulation of interstate commerce. * * *." 250 U. S. 459, 63 L. ed. 1084.

In *Crescent Cotton Oil Company v. State of Mississippi*, 257 U. S. 129, 66 L. ed. 166, it was held that a non-resident corporation operating a cotton seed oil mill in its home state and cotton gins in Mississippi, and shipping out of Mississippi for use in its oil mills in another state, all of the cotton seed which it purchased in connection with it's ginning operations did not make it, by reason of such operation, an instrumentality of interstate commerce, so as to invalidate Mississippi's "anti gin" statute prohibiting any corporation from owning gins where such corporations were interested in the manufacture of cotton seed oil or cotton seed meal. In delivering the opinion, the court said:

> "When the ginning is completed, the operator of the gin is free to purchase the seed or not; and, if it is purchased, to store it in Mississippi indefinitely, or to sell or use it in that state, or

to ship it out of the state for use in another; and, under the cases cited, it is only in this last case, and after the seed has been committed to a carrier for interstate transport, that it passes from the regulatory power of the state into interstate commerce and under the national power."

In *Carson Petroleum Co. v. Vial*, 279 U. S. 94, 75 L. ed. 626, the Supreme Court held as follows:

"'The conclusion in cases like this must be determined from the various circumstances. Mere intention by the owner to send the logs out of the state does not put them in interstate commerce, nor does preparatory gathering for that purpose, at a depot. It must appear that the movement for another state has actually begun and is going on. Solution is easy when the shipment has been delivered to a carrier for a destination in another state."

The court in discussing when a commodity is in the channels of interstate commerce, said further:

"An instance of interruptions of railroad transportation is *Bacon v. Illinois*, 227 U. S. 504, 57 L. ed. 615, 33 Sup. Ct. Rep. 299. Bacon, the owner of the grain, and the taxpayer, had bought it in the South and had secured the right from the railroads transporting it to remove it from their custody to his private grain elevator in Illinois where for his own purpose he proceeded to inspect, weigh, clean, clip, dry, sack, grade, or mix it, and had power under his contract with the carriers either to change its ownership, consignee or destination or to restore the grain, after the processes mentioned, to the carrier to be deliv-

> ered at the destination in another state according to his original intention. The question was whether the removal of the grain to his private elevator interrupted the continuity of the transportation and made the grain subject to local taxation there. It was held that it did; that the grain was locally dealt with in the interest of the owner while it was in his custody and was subject to his complete disposition for a collateral business purpose of his own."

Therefore, the point of time when a commodity enters the channels of interstate commerce, is the time when an article of commerce is committed to the carrier for transportation to the state of its ultimate destination.

In *McCluskey v. Mayersville*, 243 U. S. 36, 61 L. ed. 578, the court used the following words:

> "The begining of the transit which constitutes interstate commerce 'is defined in *Coe v. Errol* to be the point of time that an article is committed to a carrier for transportation to the state of its destination, or started on its ultimate passage."

In *General Oil Company vs. Crain*, 209 U. S. 212, 52 L. ed. 754, it was held that oil shipped from Pennsylvania and destined ultimately for points in Arkansas, Louisiana and Mississippi, is not property in interstate commerce, so as to be exempt from State taxation or inspection laws while it is held at a distributing point maintained by the shippers in Tennessee, at which point such oil is unloaded from tank cars into various tanks, barrels, and other re-

ceptacles and from which it is forwarded to its final destination. The court said:

> "Property, therefore, at an intermediate point between the places of shipment and ultimate destination, may cease to be a subject of interstate commerce. Necessarily, however, the lengh and purpose of the interruption of transit must be considered. * * * *
>
> "We have considered this case so far in view of the cases which involve the power of taxation. It may be that such power is more limited than the power to enact inspection laws. *Patapsco Guano Co. v. Board of Agriculture*, 171 U. S. 356, 43 L. ed. 195; 18 Sup. Ct. Rep. 862. The difference, if any exists, it is not necessary to observe. The cases based on the taxing power show the contentions of plaintiff in error are without merit; in other words, show that its oil was not property in interstate commerce."

In *Merchants Exchange of St. Louis v. State of Missouri on the Relation of John T. Barker, Attorney General*, 248 U. S. 365, 63 L. ed. 300, the Supreme Court held that a statute of Missouri providing that in cities having more than 75,000 inhabitants, buildings used for the storage of grain be deemed public warehouses, and prohibiting the issuance of weight certificates by other than authorized, bonded state weighers, did not violate the Constitution of the United States. The court said:

> "Section 63 does not violate the commerce clause of the Constitution. The contention that it does was rested below solely on the ground that the prohibition, as applied to grain received from

or shipped to points without the state, burdens interstate commerce. It clearly does not. *Pittsburg & S. Coal Co. v. Louisiana,* 156 U. S. 590, 39 L. ed. 544, 5 Inters. Com Rep. 18, 15 Sup. Ct. Rep. 459; *W. W. Cargill Co. v. Minnesota,* 180 U. S. 452, 45 L. ed. 619, 21 Sup. Ct. Rep. 423. But the additional contention is made here that all state regulation of the weighing of grain was superseded by the United States Grain Standards Act, approved August 11, 1916 (39 Stat. at L. 482, chap. 313.) That act (which is part B of Chapter 313) relates exclusively to the establishment by the Secretary of Agriculture of standards of quality and condition. It does not in any way refer to the weighing of grain. And part B of chapter 313 by Sec. 7 (p. 484), like part C, the United States Warehouse Act (which does contain some reference to weighing), by Section 29 (p. 490), makes manifest the purpose of Congress not to supersede state laws for the inspection and weighing of grain, but to co-operate with state officials charged with the enforcement of such state laws. The Missouri act is not superseded by or in conflict with the Federal Legislation."

In *Hope Natural Gas Company v. Hall, State Tax Commissioner of West Virginia, et al,* 274 U. S. 284, 71 L. ed. 1049, the Supreme Court upheld a statute of the State of West Virginia levying an occupation tax on persons engaged in producing for sale natural gas. The Gas Company was engaged in producing natural gas in West Virginia and was transporting it directly from the well to another state where it was sold. The Supreme Court held that the statute did not violate the Federal Constitution.

In *Oliver Iron Mining Company v. Lord*, 262 U.S. 172, 67 L. ed. 929, the statute of Minnesota levied a tax upon each person "engaged in the business of producing iron ore or other ores." The plaintiff was engaged in mining ore and loading it on cars and shipping it in interstate commerce. The statute was upheld and in so doing the court said:

> "We shall therefore treat the tax as an occupation tax in dealing with the contentions presented.
>
> "The chief contention is that mining, as conducted by the plaintiffs, if not actually a part of interstate commerce, is so closely connected therewith that to tax it is to burden or interfere with such commerce, which a state cannot do consistently with the commerce clause of the Constitution of the United States.
>
> "The facts on which the contention rests are as follows: The demand or market within the state for iron ore covers only a negligible percentage of what is mined by the plaintiffs. Practically all of their output is mined to fill existing contracts with consumers outside the state and passes at once into the channels of interstate commerce. Three-fourths of it is from open-pit mines and one-fourth from underground mines. At the open-pit mines, empty cars are run from adjacent railroad yards into the mines and there loaded. Steam shovels sever the ore from its natural bed and lift it directly into the cars. When loaded the cars are promptly returned to the railroad yards, where they are put into the trains which start the ore on its interstate journey. The

several steps follow in such succession that there is practically continuity of movement from the time the ore is severed from its natural bed. The operations within the mine and the movement of the cars into and out of the mine are conducted by the plaintiffs. The subsequent transportation is by public carriers. At the underground mines the plaintiffs dig the ore, bring it to the surface through shafts, and put it in elevated pockets where it readily can be loaded into the cars. The subsequent movements are much the same as at the open-pit mines, but their continuity is not so pronounced. Some of the ore from both kinds of mines—between 10 and 20 per cent—is concentrated by washing or beneficiated after coming out of the mine and before starting out of the state; but our conclusion respecting the usual operations renders this deflection immaterial. * * * *

"The ore does not enter interstate commerce until after the mining is done, and the tax is imposed only in respect of the mining. No discrimination against interstate commerce is involved. The tax may indirectly and incidentally affect such commerce, just as any taxation of railroad and telegraph lines does, but this is not a forbidden burden or interference."

In *Philadeuphia and Reading Railroad Co. v. Commonwealth of Pennsylvania*, 82 U. S. 164, the Court held as follows:

"No doubt every tax upon personal property or upon occupations, business or franchises, affects more or less the subjects and the operations of commerce. Yet it is not everything that af-

fects commerce that amounts to a regulation of it, within the meaning of the Constitution. * * *

"The tax is laid upon the gross receipts of the Company; laid upon a fund which has become the property of the Company, mingled with its other property, and possibly expended in improvements or put out at interest. The statute does not look beyond the corporation to those who may have contributed to its treasury."

We have already stated in the *Natural Gas Company* and *Oliver Iron Mining Company* cases, supra, it appears that the plaintiffs bought the gas and coal before it was produced, and that they bought it for the purpose of selling it in interstate commerce, and did so sell it. However, the court held squarely that the mining of the coal and the production of the gas was not interstate commerce and upheld the constitutionality of the statutes imposing an occupation tax on the gas company and the coal company.

Rowland C. Heisler v. Thomas Colliery Co., et al, 260 U. S. 245, 67 L. ed. 237, was presented on a writ of error to the Supreme Court of the State of Pennsylvania to review a judgment affirming a judgment of the Court of Common Pleas, dismissing a suit brought to enjoin the enforcement and payment of a tax on anthracite coal.

In 1921 the commonwealth passed an Act providing that from and after its passage, each ton of anthracite coal mined, washed or screened, or otherwise prepared for market in the commonwealth, should be subject to a tax of one and one-half per cent of the value thereof, when prepared for market. The bill filed by plaintiff in error asasiled the

Act of 1921 as being offensive to the Fourteenth Amendment to the Constitution of the United States, also the right of the State to impose the tax, as being a regulation of interstate commerce, protected by the commerce clause of the Federal Constitution.

In disposing of the case with reference to whether or not said statute violated the interstate commerce clause of the Federal Constitution the court said:

> "We may, therefore, disregard the adventitious considerations referred to and their confusion, and, by doing so, we can estimate the contention made. It is that the products of a state that have, or are destined to have, a market in other states, are subpects of interstate commerce, though they have not moved from the place of their production or preparation.
>
> "The reach and consequence of the contention repel its acceptance. If the possibility, or, indeed, certainty, of exportation of a product or article from a state, it would seem to follow that it is in such commerce from the instant of its growth or production; and in the case of coals, as they lie in the ground. The result would be curious. It would nationalize all industries; it would nationalize and withdraw from state jurisdiction and deliver to Federal commercial controil the fruits of California and the South, the wheat of the West and its meats, the cotton of the South, the shoes of Massachusetts, and the woolen industries of other states at the very inception of their production or growth; that is, the fruits unpicked, the cotton and wheat ungathered, hides and flesh of cattle yet 'on the hoof,' wool yet un-

shorn, and coal yet unmined, because they are, in varying percentages, destined for and surely to be exported to states other than those of their production.

"Other cases have decided the same and afford illustrations of it. *Cornell v. Coyne*, 192 U. S. 418, 48 L. ed. 504, 24 Sup. Ct. Rep. 383; *Susquehanna Coal Co. v. South Amboy*, 228 U. S. 665, 57 L. ed. 1015, 33 Sup. Ct. Rep. 712; *Bacon v. Illinois*, 227 U. S. 504, 57 L. ed. 615, 33 Sup. Ct. R. 299; *General Oil Co. v. Crain*, 209 U. S. 211, 52 L. ed. 754, 28 Sup. Ct. Rep. 475; *United Mine Workers v. Coronado Coal Co.*, 259 U. S. 344, 66 L. ed. 975, 42 Sup. Ct. Rep. 570."

In the case of *Utah Power & Light Co. v. Pfost*, 286 U. S. 163, 76 L. ed. 1038, Mr. Justice Sutherland delivering the opinion of the court, said:

"It is apparent that in the last analysis the question we are called upon to solve is this: Upon the facts of the present case is the generation of electrical energy, like manufacture or production generally, a process essentially local in character and complete in itself; or is it so linked with the transmission as to make it an inseperable part of a transaction in interstate commerce? From the strictly scientific point of view the subject is highly technical, but in considering the case, we must not lose sight of the fact that taxation is a practical matter and that what consitutes commerce, manufacure or production is to be determined upon practical consideration."

We submit that the act of compression is only a further step in the preparation of cotton to enter the channels

of interstate commerce, so that same can be transported more economically as a commodity of interstate commerce, by the carrier.

The position of appellant, when followed to its ultimate conclusion, would make every farmer, who loads a bale of seed cotton on his wagon or truck in his field, to haul it to a gin for the purpose of separating the seed from the lint, engaged in interstate commerce, and his wagon and team or truck would be an instrumentality of interstate commerce, exempt from the imposition of a state tax. The same would be true of a person operating a cotton gin. We do not think that counsel for appellant would for one moment contend that a farmer hauling his cotton to the gin, and a ginnery engaged in separating the seed from the lint are engaged in intertsate commerce.

When viewing the facts in this record, there can be only two possible purposes for placing cotton in the warehouse and compress:

> First: It is placed in a warehouse as a place of storage until a market can be procured, and to obtain a warehouse receipt so that the owner thereof may sell same by delivery of the warehouse receipts and without actual delivery of the cotton.
>
> Second: That the cotton may be compressed so as to permit more bales of cotton to be put into a car or ship when it starts on its journey in interstate commerce.

The fact that cotton stored in a warehouse is to be shipped out of the state, does not make a statute requiring

a license for conducting the business of storing cotton in the state, amount to a regulation of interstate commerce.

In *Munn, et al v. People of State of Illinois*, 94 U. S. 113, 24 L. ed. 77, this court held that the limitations on the legislative power of the state imposed by the Constitution of the United States, did not apply to a state statute fixing the maximum of charges for storage of grain in warehouses at Chicago and other places in the state. In this case, the court said:

> "The warehouses of these plaintiffs in error are situated and their business carried on exclusively within the limits of the State of Illinois. They are used as instruments by those engaged in State as well as those engaged in interstate commerce, but the yare no more necessarily a part of commerce itself than the dray or cart by which, but for them, grain would be transferred from one railroad station to another. Incidentally they may become connected with interstate commerce, but not necessarily so. Their regulation is a thing of domestic concern and, certainly until Congress acts in reference to their interstate relations, the State may exercise all the powers of government over them, even though in so doing it may indirectly operate upon commerce outside its immediate jurisdiction. We do not say that a case may not arise in which it will be found that a State, under the form of regulating its own affairs, has encroached upon the exclusive domain of Congress in respect to interstate commerce, but we do say that, upon the facts as they are represented to us in this record, that has not been done."

In *W. W. Cargill Co. v. State of Minnesota, et al,* 180 U. S. 452, the Supreme Court of the United States held that a state statute requiring a license for conducting the business of storing grain in an elevator to be shipped out of the state did not amount to a regulation of interstate commerce. In disposing of the question, the court used the following language:

> "It is also contended that the requirement of a license from the defendant company is inconsistent with the power of Congress to regulate commerce among the states. This view cannot be accepted. The statute puts no obstacle in the way of the purchase by the defendant company of grain in the state or the shipment out of the state of such grain as it purchased. The license has reference only to the business of the defendant at its elevator and warehouse. The statute only requires a license in respect of business conducted at an established warehouse in the state between the defendant and the sellers of grain. We do not perceive that in so doing the state has intrenched upon the domain of Federal authority, or regulated or sought to regulate interstate commerce. In no real or substantial sense is such commerce obstructed by the requirement of a license."

In the case of *Lawrence v. State Tax Commission,* 286 U. S. 276, 76 L. ed. 1102, the Supreme Court held that the federal Constitution, apart from the specific grant to the federal government of the exclusive power to levy certain limited classes of taxes, and to regulate interstate and foreign commerce, leaves states unrestricted in their power to tax those domiciled within them, so long as the tax imposed is upon property or on privileges enjoyed

there. While it is true that this case did not involve a privilege tax, however, the principle that the state can levy taxes on privileges enjoyed therein is applicable to the tax in this case.

The contract entered into between the appellants and the Yazoo and Mississippi Valley Railroad Company dated February 1st, 1930, whereby the appellant became the limited agent of the Railroad Company for the purpose of receiving cotton from the Railroad Company, delivering cotton to the Railroad Company, loading and unloading cotton from and into the cars of the Railroad Company, and making proper delivery of the cotton in the custody of the Compress Company, so far as concerns the interests of the Railroad Company, was not sufficient to make the Federal Compress and Warehouse Company an instrumentality engaged in interstate commerce, for it is "not within the power of the parties, by the form of their contract, to convert what was exclusively a local business into an interstate commerce business protected by the commerce clause" of the federal Constitution.

Superior Oil Co. v. Mississippi, Ex Rel, Knox, 280 U. S. 393;

Browning v. Waycross, 233 U. S. 16, 58 L. ed. 828, 832.

The amount of the tax imposed by the Mississippi statute upon the operator of a compress or a warehouse, as the case may be, is based or measured by the amount of business done within the state in one year; that is to say, upon the number of bales of cotton stored or compressed, as the

case may be. That does not impose any burden, directly or indirectly, upon interstate commerce.

Hump Hairpin Mfg. Co. v. Emmerson, 258 U. S. 294, 66 L. ed. 622, 42 Sup. Ct. Rep. 305;

Underwood Typewriter Co. v. Chamberlain, 254 U. S. 113, 120, 65 L. ed. 165, 169, 41 Sup. Ct. Rep. 45;

United States Glue Co. v. Oak Creek, 247 U. S. 321, 326, 62 L. ed. 1135, 1140, 38 Sup. Ct. Rep. 499, Ann. Cas. 198E 748;

William E. Peck & Co. v. Lowe, 247 U. S. 165, 173-175, 62 L. ed. 1049, 1051, 1052, 38 Sup. Ct. Rep. 432;

Kansas City, M. & B. R. Co. v. Stiles, 242 U. S. 111, 119, 61 L. ed. 176, 187, 37 Sup. Ct. Rep. 58;

Kansas City, Ft. S. & M. R. Co. v. Kansas, 240 U. S. 227, 234, 60 L. ed. 617, 620, 36 Sup. Ct. Rep. 261;

Wisconsin & M. R. Co. v. Powers, 191 U. S. 379, 48 L. ed. 229, 24 Sup. Ct. Rep. 107;

Maine v. Grand Trunk R. Co. 142 U. S. 217, 35 L. ed. 994, 3 Inters. Com. Rep. 807, 12 Sup. Ct. Rep. 121, 163;

St. Louis-San Francisco R. Co. v. Middlekamp, 256 U. S. 226, 231, 65 L. ed. 905, 913, 41 Sup. Ct. Rep. 480;

International Shoe Co. v. Shartel, 279 U. S. 429, 433, 73 L. ed. 781, 785, 49 Sup. Ct. Rep. 380.

The United States Warehouse Act relates exclusively to the establishment by the Secretary of Agriculture of standards of quality and condition of agricultural products. The Mississippi statutes here under consideration do not undertake to enter the field of establishing the quality or condition of agricultural products stored by appellant.

Merchants Exchange v. State of Missouri, 248 U. S. 365, 63 L. ed. 300;

American Manufacturing Co. v. St. Louis, 250 U. S. 459, 63 L. ed. 1084.

So long as the cotton remained in the compress and until delivered to a carrier for shipment, it is under the direction and control of its owner and could be diverted from, or started on its way in interstate commerce.

From the authorities above cited, I think it is clear that cotton, while it is in storage or being compressed, is not in interstate commerce and cannot become a commodity in interstate commerce until it is delivered to and accepted by a carrier with its destination beyond the borders of the state. In other words, the compressing of the cotton is the final step in preparing the bales of cotton to become a commodity of interstate commerce.

Therefore, we respectfully submit that the appellant is not engaged in interstate commerce, but in a local and private business enterprise subject to state taxation.

POINT NO. II.

A COTTON WAREHOUSE AND COMPRESS LICENSED UNDER THE PROVISIONS OF THE "UNITED STATES WAREHOUSE ACT" IS NOT A FEDERAL INSTRUMENTALITY SO AS TO BE EXEMPT FROM STATE TAXATION.

The principle of immunity from state taxation of instrumentalities of the federal government has its inherent limitations. It is aimed at the protection of the government. The statute in question imposing the privilege tax is what it purports to be—a business tax on the privilege of engaging in the business of operating a cotton warehouse and compress. There is no purpose to tax instrumentalities of United States government. *McCulloch v. Maryland*, (U. S.) 4 L. ed. 579. 608.

See also *David Burnet, Commissioner of Internal Revenue v. A. T. Jergins Trust*, 77 L. ed. 550; *Indian Territory Illuminating Oil Co. v. Board of Equilization of Tulsa County, Oklahoma; Indian Territory Illuminating Oil Co. v. Board of County Commissioners, Payne County, Oklahoma*, 77 L. ed. 501.

The immunity from state taxation of federal instrumentalities does not extend to anything lying outside of or beyond governmental functions. *Indian Motor Cycle Co. v. United States*, 283 U. S. 270, 576, 579.

The mere fact that the appellant has made application to the Department of Agriculture and qualified as a bonded warehouseman under the United States Warehouse

Act, to fulfill a governmental purpose, does not make it immune from state taxation, when the compress and warehouse is held in private ownership and the privilege is exercised for private advantage. *Susquehanna Power Co. v. Tax Commission*, 283 U. S. 291, 75 L. ed. 1042.

It is apparent that the appellant in storing and compressing cotton, is not acting as an agent for the federal government. It acts with the government's permission and while it has received a privilege from the government, it is not a privilege to be exercised on behalf of the government. The tax is not upon the exertion of, and cannot be said to burden, any governmental functions. *Fox Film Corporation v. Doyal*, 286 U. S. 123.

The privilege is not laid upon the license granted by the Department of Agriculture, but upon the storing and compression of cotton, which it does at its own pleasure and exclusively for its own profit. *Utah Power & Light Co. v. Pfost*, 286 U. S. 165.

The fact that the appellant's warehouse is licensed and bonded under the United States Warehouse Act, does not exempt that business from the burdens of state taxation imposed by a statute otherwise valid. *Railroad Co. v. Penniston*, 18 Wall. 5, *Choctaw O. & G. Railroad Co. v. Mackey*, 256 U. S. 53; *Wilcutts v. Bunn*, 282 U. S. 216.

Thus, the permission granted by the federal government to a telephone company to use the military and post roads of the United States for its poles and wires "did not prevent the state from taxing the real or personal property

belonging to the company within its borders, or from imposing a license tax upon the right to do a lawful business within the state. *Williams v. Talladega*, 226 U. S. 404, *Western Union Telegraph Co. v. Mass.*, 125 U. S. 530; *Western Union Telegraph Co. v. Gottlieb*, 190 U. S. 412.

A bridge over a navigable stream between states is made a post road by an act of Congress, which also regulates the height of the bridge and the width of the spans, does not interfere with the right of the state to impose taxes upon the bridge company. *Henderson Bridge Co. v. Kentucky*, 166 U. S. 150, 41 L. ed. 953.

A state tax on the capital stock of a bridge company which maintains an interstate bridge is not a tax on a franchise conferred by the federal government, although the corporation has authority under an act of Congress to construct the bridge. *Keokuk and H. Bridge Co. v. Illinois*, 175 U. S. 626, 44 L. ed. 299.

The fact that a domestic railroad company was under the control of the federal government during the tax year does not exonerate it from a state franchise tax. *St. Louis-San Francisco R. R. Co. v. Middlecamp*, 256 U. S. 226.

Therefore, we respectfully submit that while the appellant is licensed under an act of Congress and has received a privilege thereby, it is not a privilege to be exercised on behalf of the government, and for that reason the Federal Compress and Warehouse Company is not an instrumentality of the federal government.

In the cases of *Broad River Power Company, Plaintiff, vs. Walter G. Query, et al,* constituting the South Carolina Tax Commission, *and Lexington Water Power Company, Plaintiff, vs. Walter G. Query, et al,* constituting the South Carolina Tax Commission, decided by this court on February 6, 1933, 77 L. ed. 489, not yet officially reportd, the plaintiffs appealed from decrees of the District Court of the United States for the Eastern District of South Carolina, dismissing suits to restrain the enforcement of a statute of the State of South Carolina imposing an excise or privilege tax on the production and sale of electric power.

In the case of Lexington Water Power Company, it was contended that it was generating current at a water power plant on the Saluda River, which plaintiff had constructed and operated pursuant to a license granted by the Federal Power Commission, under the "Federal Water Power Act," the same being Chapter 12, Title 16, of the United States Code, Annotated, and that the tax was an excise license or privilege tax upon a federal agency. The Supreme Court, in passing upon the question involved, used the following language

> "It is apparent, however, that the complainant in generating and selling power is not acting as an agent for the Government. It acts with the Government's permission, and while it may be said to have received a privilege from the Government, it is not a privilege to be exercised on behalf of the Government. The tax is not upon the exertion of, and cannot be said to burden, any governmental function. *Fox Film Corp. v. Doyal,* 286 U. S. 123, 130, 76 L. ed. 1010, 1015, 52 S. Ct. 546. The tax is not laid upon the license

granted by the Federal Water Power Commission but upon the production and sale of power which the company generates at its own pleasure and exclusively for its own profit. Notwithstanding the special characteristics of electrical energy, the company is engaged in producing and selling an article of trade. *Utah Power & Light Co. v. Pfost*, 286 U. S. 165, 180, 181, 76 L. ed. 1038, 52 S. Ct. 548. The product is property. The fact that a privilege has been received from the Federal Government does not exempt that property or the local business in producing and selling it from the burdens of taxation otherwise valid."

The latter case herein quoted from, we submit, is decisive of the question here involved because the Federal Compress and Warehouse Company is in no better position with reference to the tax imposed by the Mississippi statute than was the Lexington Water Power Company; the appellant here, merely being licensed under the provisions of the United States Warehouse Act, and enjoying a privilege thereby granted, not to be exercised on behalf of the government, but to be exercised at its own pleasure and exclusively for its own profit.

The decisions are uniform that articles of interstate commerce after same is brought within the confines of a state and become a part of the mass of property therein are legitimate objects on which the state can levy and collect ad valorem taxes. That being true the converse thereof is also true. While an article or commodity is still a part of the general mass of property within the state, where it is produced, it is a legitimate object on which the state can

levy and collect advalorem taxes. It then necessarily follows that a privilege tax upon the right to handle or deal with such commodities within the state, and before it ceases to be a part of the general mass of property within the state, may be levied and collected without contravening the Federal Constitution.

APPELLANTS PRINCIPAL AUTHORITIES COMMENTED UPON AND DIFFERENTIATED.

Appellant relies for a reversal of this cause, upon the principle announced by this court in that class of cases of which *Dahnke-Walker Mill Co. v. Bondurant*, 257 U. S. 280, 66 L. ed. 239, and *Lemke v. Farmers' Grain Company*, 258 U. S. 551, 66 L. ed. 458, are controlling. These cases, and those of the same class are not in point here for the reason that the question there involved was not a question of state taxation but state regulation. The distinction is clear and this court so recognized because, in *Lemke v. Farmers' Grain Company*, supra, the court made it clear and positive that the principle on which that case was decided, was not opposed to that line of decisions where, under presented facts, the court had occasion to define interstate commerce in cases where the right of state taxation was involved. The court recognizing that the principle there announced might be confused with that line of decisions where the question of state taxation was involved, took occasion to indicate a distinction by saying:

> "Nor is this conclusion opposed by cases decided in this court and relied upon by appellants, in which we have had occasion to define the line between state and Federal authority under facts presented, which required a definition of inter-

state commerce where the right of state taxation was involved, or manufacture or commerce of an intrastate character w. s the subject of consideration. In those cases we have defined the beginning of interstate commerce as that time when goods begin their interstate journey by delivery to a carrier or otherwise, thus passing beyond state authority into the domain of Federal control. Cases of that type are not in conflict with principles recognized as controlling here."

There is also another distinction in that the act was a regulatory act, which authorized the state officer to fix and determine the price to be paid for grain which was bought, shipped and sold in interstate commerce. The statute was struck down because of the price fixing feature of the act which the court said was a vital part of the statutory scheme, and "apparent that, without these sections, the state legislature would not have passed the act."

In *Dahnke-Walker Mill Co. v. Bondurant,* supra, the State of Kentucky had a statute which prescribed the conditions on which corporations of other states might do business in that state. The plaintiff was a corporation of Tennessee, and engaged in operating flour and feed mills in that state. The defendant was a resident of the state of Kentucky, and engaged in farming in that state. The parties had entered into a contract for the sale and delivery of a crop of wheat. A small part of the crop was delivered as agreed, but delivery of the rest was refused. A payment had been advanced on the crop which covered more wheat than was delivered. An action was brought in the state court of Kentucky on the contract. The de-

fense interposed was, that the plaintiff had not complied with the statute of Kentucky prescribing the condition upon which it, as a corporation, might do business in that state, and that the contract was therefore, not enforceable. The contract provided for delivery of the wheat on board the cars in Kentucky, which fact was the turning point in the litigation. Mr. Justice Van Devanter, in delivering the opinion of the court, used the following language:

> "The state court, stressing the fact that the contract was made in Kentucky and was to be performed there, put aside the further facts that the delivery was to be on board the cars, and that the plaintiff, in continuance of its prior practice, was purchasing the grain for shipment to its mill in Tennessee. We think the facts so neglected had a material bearing and should have been considered. They showed that what otherwise seemed an intrastate transaction was a part of interstate commerce."

When the court said, "We think the facts so neglected had a material bearing and should have been considered. They showed that what otherwise seemed an intrastate transaction was a part of interstate commerce," what fact was the court referring to? Evidently, it was referring to the fact that the wheat, under the contract, was sold F. O. B. cars in Kentucky, and that this condition in the contract made the transaction a part of interstate commerce, which is in line with the reasoning of this court, to the effect that when a commodity is loaded on cars and delivered to a carrier for transportation to another state, the commodity is then in the channel of interstate commerce and beyond state regulation. Had it not been for the provision in the con-

tract that the delivery of the wheat was to be on board the cars, the transaction would have been an intrastate transaction, and the decision of this court in this case would have been different.

The line of cases above referred to, do not deal with the power of the state to tax businesses and instrumentalities which may be engaged in preparing or storing articles of trade, which ultimately may enter into and become a commodity in interstate commerce, but deals with the power of a state to prevent or hinder an engagement in interstate commerce within the limits of the state without her consent and license.

Appellant also relies upon the principle first announced in *Brown v. Maryland*, 12 Wheat. 419, 446, 447, 6 L. ed. 678, 688, and decisions subsequent thereto. All of the cases subsequent to the case of *Brown v. Maryland*, supra, show that the resemblance between imports and exports, and articles in original packages, in interstate commerce with respect to being immune from taxation fails. Immunity attaches to imports or exports before sale, whereas the immunity of an article because of its relation to interstate commerce depends on the question of whether or not the tax challenged, regulates or burdens interstate commerce.

In the case at bar we are not dealing with the storage or compression of cotton as an import or as an export. The privilege tax imposed by the state statute is not in effect a tax upon the right to store and compress interstate ship-

ments of cotton itself, but is a privilege tax upon a local business which is consummated within the state.

Cotton does not require storage in a warehouse or compression by a compress of the character here involved, as a necessary prerequisite to becoming an article of interstate or foreign commerce.

In *Woodruff v. Parham*, 8 Wall. 123, 19 L. ed. 382, the distinction is drawn between the immunity from taxation of articles of imports and articles in their relation to interstate commerce. In that case, Woodruff, an auctioner, located in the City of Mobile, Alabama, received in the general course of business for himself, and as consignee and agent for others, merchandise from Alabama and other states, and sold such articles in unbroken packages. The City of Mobile, under its charter, levied a uniform tax on real and personal property on sales at auction, on sales of merchandise, and the capital employed in businesses in that city. Woodruff refused to pay the tax on sales of merchandise from other states in original packages, and contended that the imposition of the tax contravened the provisions of the Federal Constitution. The court held that the tax did not discriminate against the sale of goods from other states and was not "an attempt to fetter commerce among the states."

The same principle was announced and applied in *Brown v. Houston*, 114 U. S. 622. Also, in *American Steel & Wire Company v. Speed*, 192 U. S. 522, 48 L. ed. 547.

All the authorities cited and relied on by appellant deal

either, (1) with questions involving the right of the state to tax imports, or (2) where an attempt was made by the state to regulate interstate commerce as distinguished from the right of the state to tax a local business enterprise, and in nowise are such authorities controlling under the facts involved in this case.

The only cases cited by appellant, which are applicable to the issues and facts involved in this case, are *Southern Pacific v. Calexico*, 288 Fed. 642; *M'Fadden v. A. G. S. R. Co.*, 241 Fed. 565, and *Crescent Cotton Oil Co. v. Mississippi*, 257 U. S. 136, 66 L. ed. 170. These cases, however, are adverse in principle to appellant's contentions and are authority for the position contended for by appellee.

CONCLUSION

In conclusion we submit (1) that the storage and compression of cotton is a process essentially local in character and complete in itself; that while it is true that practically all cotton grown in Mississippi is sold and shipped in interstate commerce, yet such cotton does not enter the channel of interstate commerce until "committed to a common carrier for transportation to another state." The process of storage and compression being completed before the cotton is committed to a carrier for transportation out of the state. The warehouse and compress, of the appellant, is not so linked with the transmission of cotton as to make it an inseparable part of a transaction in interstate commerce. Cotton warehouses and compresses are used as instruments by those engaged in state as well as interstate commerce, but they are no more necessarily a part of commerce itself

than the horse, wagon or motor truck by which cotton is hauled to such warehouses and compresses. The compress and warehouse is no part of the channel through which cot- of interstate commerce; therefore, the warehouse and compress of appellant being no part of the channel of interstate commerce, it is not an instrumentality engaged in interstate commerce, and as such exempt from state taxation.

(2) The appellant does not act as an agent for the federal government; performs no federal function; exercises no privileges on behalf of the federal government; but on the other hand, is operated as a private enterprise and for individual profit. While this is done with the permission of the federal government, it is without any aim toward the protection of the government; therefore, the tax imposed by the Mississippi statute is not upon the exercise of any governmental function so as to be a tax upon an instrumentality of the federal government.

Therefore, for the reasons above stated, we respectfully submit that the judgment of the Supreme Court of the State of Mississippi should be affirmed.

GREEK L. RICE, Attorney General
of the State of Mississippi.
Of Counsel for Appellee.

APPENDIX "A"

Chapter 88 of General Laws of Mississippi 1930.

SECTION 3. PRIVILEGE TAXES IMPOSED.—Every person desiring to engage in any business, or exercise any privilege hereinafter specified, shall first, before commencing same, apply for, pay for, and procure from the proper officer a privilege license authorizing him to engage in the business, or exercise the privilege specified therein; and the amount of tax shown in the following schedules is hereby imposed for the privilege of engaging and/or continuing in the businesses set out therein.

Section 57. COTTON COMPRESSES.—Upon each person operating a cotton compress, as follows:

Where the number of bales of cotton compressed per annum is more than 100,000 bales	$1,000.00
Where the number of bales of cotton compressed per annum is 100,000 bales, or less, and more than 75,000 bales	800.00
Where the number of bales of cotton compressed per annum is 75,000 bales, or less, and more than 50,000 bales	600.00
Where the number of bales of cotton compressed per annum is 50,000 bales, or less, and more than 40,000 bales	500.00
Where the number of bales of cotton compressed per annum is 40,000 bales , or less, and more than 30,000 bales	400.00
Where the number of bales of cotton compressed per annum is 30,000 bales, or less, and more than 20,000 bales	300.00

Where the number of bales of cotton compressed per annum is 20,000 or less 200.00

Section 63. COTTON WAREHOUSES.—Upon each person operating a warehouse for the storage of cotton, whether in conjunction with a compress or not, as follows:

Where the storage capacity of same is 50,000 or more bales $150.00

Where the storage capacity of same is less than 50,000 and more than 35,000 bales 100.00

Where the storage capacity of same is 35,000 bales or less, and more than 20,000 ..... 75.00

Where the storage capacity of same is 20,000 bales, or less, and more than 10,000 bales 50.00

Where the storage capacity of same is 10,000 bales or less, and more than 5,000 bales 40.00

Where the storage capacity of same is 5,000 bales or less, and more than 2,000 bales 20.00

Where the storage capacity of same is 2,000 bales or less 10.00

Section 242. PENALTIES.—Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor, and on conviction thereof shall be fined not more than $500.00 or imprisoned in the county jail not exceeding six months, or by both such fine and imprisonment in the discretion of the court within the limitations aforesaid; and such fine and imprisonment shall be in addition to any other penalty imposed by any particular section of this chapter (act). The courts in the county in which the offender resides, or if a company, in which it carries on business, shall have jurisdiction to enforce this section.

APPENDIX "B"

The hereinafter cited case having been decided by the United States Supreme Court since the preparation of the original brief in this case, it is noted herein as Appendix "B."

State of Minnesota v. George Blasius, being No. 7 decided November 6, 1933, and not yet officially reported.

In this case the court held that where cattle were shipped into a state and there sold to a livestock trader, who held them for resale in the course of his business of selling cattle, both within and without the state, such cattle were no longer in transit or in the course of interstate commerce, but acquired a situs in and became a part of the general mass of property within the state, subject to the state's taxing power.

The gist of the opinion is that such cattle were not immune from a tax imposed by the state on the ground that they were being moved in interstate commerce. In this case the court reviewed many of the authorities cited in this brief, and reaffirmed the principles first announced by this court in *Coe v. Errol*, 116 U. S. 572, and consistently adhered to in subsequent decisions.